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EXAMINER

SHELEHEDA, JAMES R

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2623

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/966,594	Applicant(s) HENDRICKS, JOHN S.	
	Examiner JAMES SHELEHEDA	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,10-13 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,10-13 and 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 05/05/08 have been fully considered but they are not persuasive.

On pages 7-8, applicant argues that Strubbe '924 fails to disclose "means for identifying frequently watched programs most often watched by said subscriber based upon said stored information", as applicant's invention monitors the *number of times* a program is watched and thus is more accurate.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., monitoring the number of times a program is watched) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Strubbe '924 discloses wherein programming watched for a specific duration, such as 15 minutes, is considered "liked" and added to a database (column 5, lines 23-32).

Thus, the database disclosed by Strubbe indicates all of the frequently watched programs most often watched by the viewer, as it specifically *excludes* any programs that were not watched. Thus, applicant's arguments are not convincing.

On page 8, applicant argues that Strubbe '924 fails to disclose "means for notifying said subscriber that a change of channel is eminent based upon nearing said future time of said program that will be broadcast at said future time."

In response, it is noted that Strubbe '867 (incorporated by reference into Strubbe '924) specifically discloses wherein the user may set a reminder for a future program (Fig. 8a; column 6, lines 25-49) and wherein the system will then notify the subscriber that a change of channel is imminent based upon nearing said future time of said program that will be broadcast at said future time (5 minutes before the program; column 6, lines 42-49). Therefore applicant's arguments are not convincing.

Claim Objections

2. Claims 1, 7 and 16 are objected to because of the following informalities:

In claim 1, line 18, claim 7, line 16 and claim 16, line 14, it appears "eminent" should be changed to --imminent--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3-7, 10-13 and 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Strubbe (5,223,924) (of record) (incorporating by reference Strubbe et al. (5,047,867) (Strubbe '867) [see Strubbe '924 at column 2, lines 31-49 and column 4, lines 27-38].

As to claim 1, Strubbe '924 discloses a set top terminal for generating an interactive electronic program guide for display on a television connected to the set top terminal (see Strubbe '924 at Fig. 1; column 1, line 56-column 2, line 15), the terminal comprising:

means for retrieving information (see Strubbe '924 at column 4, line 59-column 5, line 32) via a program control information signal (TV program information data signal; see Strubbe '924 at column 3, line 59-column 4, line 2) of a program selected from a plurality of programs and watched by a subscriber (see Strubbe '924 at column 5, lines 26-32);

means for storing said information (memory section, 52, Fig. 3; see Strubbe '924 at column 4, lines 17-26);

means for identifying (CPU, 50) frequently watched programs most often watched by said subscriber based upon said stored information (automatically identifying watched programs based upon the first database; see Strubbe '924 at column 4, lines 21-26 and column 5, lines 23-32);

means for receiving a television signal (see Strubbe '924 at column 3, lines 38-58);

means for extracting individual programs from the television signal (see Strubbe '924 at column 3, lines 38-58);

means for generating an electronic program guide for controlling display of content on a television screen (see Strubbe '924 at column 3, line 59-column 4, line 27 and column 5, lines 33-47), the guide comprising:

a favorites menu including names of programs available for selection (see Strubbe '924 at column 5, lines 12-47), wherein the programs included in the favorites menu are based on the identified frequently watched programs (customized program listing based upon the identified watched programs; column 5, lines 24-42);

means for receiving selection signals from a user input (see Strubbe '924 at column 4, line 59-column 5, line 47) of a program that will be broadcast at a future time selected from said favorites menu (see Strubbe '867 at Fig. 8a and column 6, lines 25-49);

means for notifying said subscriber that a change of channel is eminent based upon nearing said future time of said program that will be broadcast at said future time (column 6, lines 42-49); and

means for changing said channel to said program at said future time (column 6, lines 42-49).

As to claim 3, Strubbe '924 discloses means for storing in memory identifiers of the frequently watched programs (see Strubbe '867 at column 5, lines 20-32 and column 4, lines 23-29 and see Strubbe '924 at column 5, lines 23-32).

As to claim 4, Strubbe '924 discloses wherein the means for retrieving said information includes means for identifying frequently watched channels (see Strubbe '867 at Fig. 6a; column 5, lines 20-32, column 4, lines 23-29 and column 1, lines 50-62) and means for storing in memory the frequently watched channels (see Strubbe '867 at column 5, lines 20-32, column 4, lines 23-29 and column 1, lines 50-62).

As to claim 5, Strubbe '924 discloses wherein the menu includes a list of frequently watched programs (see Strubbe '867 at Fig. 6a; column 5, lines 20-32, column 4, lines 23-29 and column 1, lines 50-62 and Strubbe '924 at column 5, lines 33-42).

As to claim 6, Strubbe '924 discloses wherein the means for generating includes means for generating the favorites menu to display programs selected by the means for identifying (see Strubbe '924 at column 5, lines 33-47 and column 6, lines 5-19).

As to claim 7, Strubbe '924 discloses a set top terminal (see Strubbe '924 at Fig. 1; column 1, line 56-column 2, line 15), comprising:

means for receiving information including information (see Strubbe '924 at column 4, line 59-column 5, line 32) via a program control information signal (TV program information data signal; see Strubbe '924 at column 3, line 59-column 4, line 2)

about television viewing preferences of a subscriber (see Strubbe '924 at column 5, lines 26-32);

a memory that stores the information (see Strubbe '924 at Fig. 3, 54, column 4, line 59-column 5, line 32);

means for identifying (CPU, 50) frequently watched programs most often watched by said subscriber based upon said stored information (automatically identifying watched programs based upon the first database; see Strubbe '924 at column 4, lines 21-26 and column 5, lines 23-32);

means for receiving a television signal from an operations center (see Strubbe '924 at column 3, lines 38-58);

means for extracting from the signal individual programs for display on a television associated with the terminal (see Strubbe '924 at Fig. 1; column 3, lines 38-58); and

means for generating an interactive program menu on the television (see Strubbe '924 at column 3, line 59-column 4, line 27 and column 5, lines 33-47), listing a group of available programs (see Strubbe '924 at column 5, lines 12-47), the group being based on said identified frequently watched programs (see Strubbe '924 at column 5, lines 12-47);

means for receiving a signal from a user input device (see Strubbe '924 at column 4, line 59-column 5, line 47) selecting a program available at a future time selected from said group of identified frequently watched programs (see Strubbe '867 at Fig. 8a and column 6, lines 25-49);

means for notifying said subscriber that a change of channel is eminent based upon nearing said future time of said program that will be broadcast at said future time (column 6, lines 42-49); and

means for changing said channel to said program at said future time (column 6, lines 42-49).

As to claim 10, Strubbe '924 discloses wherein the television viewing preferences include frequently watched channels (see Strubbe '867 at Fig. 6a; column 5, lines 20-32, column 4, lines 23-29 and column 1, lines 50-62).

As to claim 11, Strubbe '924 discloses wherein the means for receiving information comprises means for automatically tracking information related to viewing habits of the subscriber (see Strubbe '924 at column 5, lines 23-32).

As to claim 12, Strubbe '924 discloses wherein the means for automatically tracking comprises automatically tracking information related to frequently watched programs (see Strubbe '924 at column 5, lines 23-32).

As to claim 13, Strubbe '924 discloses wherein the means for receiving information comprises means for activating a learning mode (see Strubbe '924 at column 5, lines 23-32) and means for receiving the respective subscriber information while the learning mode is activated (see Strubbe '924 at column 5, lines 23-32).

As to claim 15, Strubbe '924 discloses means for receiving program content information for the individual programs from the operations center (see Strubbe '924 at column 3, line 59-column 4, line 16); and

wherein the means for generating comprises means for generating the menu including said identified frequently watched programs (see Strubbe '924 at column 5, lines 33-47 and column 6, lines 5-19).

As to claim 16, Strubbe '924 discloses a set top terminal for generating a customized menu of available programs for selection by a user (see Strubbe '924 at Fig. 1; column 1, line 56-column 2, line 15), the terminal comprising:

means for receiving a television signal (see Strubbe '924 at column 3, lines 38-58);

means for extracting individual programs from the television signal (see Strubbe '924 at Fig. 1; column 3, lines 38-58);

means for matching individual programs to said user based upon information received via a program control information signal (TV program information data signal; see Strubbe '924 at column 3, line 59-column 4, line 2) about television viewing preferences of said user used to identify frequently watched programs most often watched by said user (see Strubbe '924 at column 5, lines 26-32); and

means for generating an interactive program menu (see Strubbe '924 at column 3, line 59-column 4, line 27 and column 5, lines 33-47) that displays a group of

programs based on said identified frequently watched programs (see Strubbe '924 at column 5, lines 12-47 and column 6, lines 5-24);

means for receiving a signal from a user input device (see Strubbe '924 at column 4, line 59-column 5, line 47) selecting a program available at a future time selected from said group of identified frequently watched programs (see Strubbe '867 at Fig. 8a and column 6, lines 25-49);

means for notifying said subscriber that a change of channel is eminent based upon nearing said future time of said program that will be broadcast at said future time (column 6, lines 42-49); and

means for changing said channel to said program at said future time (column 6, lines 42-49).

As to claim 17, Strubbe '924 discloses wherein the means for matching comprises means for matching based on information regarding content of the individual programs (see Strubbe '924 at column 5, line 48-column 6, line 4 and column 3, line 59-column 4, line 2) provided in said program control information signal (see Strubbe '924 at column 3, line 59-column 4, line 2).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2623

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES SHELEHEDA whose telephone number is (571)272-7357. The examiner can normally be reached on Monday - Friday, 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda
Examiner, Art Unit 2623

JS

/Chris Kelley/
Supervisory Patent Examiner, Art Unit 2623